

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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CATHY BENSON, *et al.*,

Plaintiffs,

v.

HG STAFFING, LLC; MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT; and DOES 1 through 50, inclusive,

Defendants.

3:16-cv-00388-LRH-WGC

ORDER

Before the court is Defendants' motion to dismiss. ECF No. 15. Plaintiffs filed a response (ECF No. 18), to which Defendants replied (ECF No. 19). Because Plaintiff Cathy Benson settled related claims against Defendants in a separate case before a different court within this district, claim preclusion applies. The court will therefore dismiss her from this action. However, Defendants' arguments regarding dismissal of the remaining plaintiffs are without merit and Defendants' motion will be denied as to these plaintiffs.

I. Background

Plaintiffs are room attendants formerly employed by Defendants HG Staffing, LLC ("HG Staffing") and MEI-GSR Holdings, LLC ("GSR"). ECF No. 14 at 3–4. Plaintiffs each bring one claim of failure to pay overtime under the Fair Labor Standards Act ("FLSA").¹ See 29 U.S.C. §

¹ After Plaintiffs filed their original complaint in this action (ECF No. 1), Defendants moved to dismiss (ECF No. 12). Instead of responding, Plaintiffs filed their First Amended Complaint ("FAC"), the operative complaint in this action. See ECF No. 14. Defendants then moved to

1 207. They allege that Defendants required all room attendants to “engage in pre-shift work
 2 activities off the clock and without compensation.” ECF No. 14 at 4. Specifically, Plaintiffs
 3 allege that Defendants “required them to arrive 20 minutes or more prior to their regularly
 4 scheduled start time to present themselves to their shift supervisors for room/floor assignments, a
 5 uniform inspection, and to retrieve tools necessary to complete their work tasks” *Id.*

6 Two related suits precede the instant action. Because both suits are relevant to
 7 Defendants’ motion to dismiss, the court will briefly describe their procedural history and
 8 substance.

9 **A. Sargent action: *Sargent v. HG Staffing*, 3:13-cv-00453-LRH-WGC**

10 In the first action, Tiffany Sargent and other individuals formerly employed by
 11 Defendants filed suit against the business entities in Nevada state court. Defendants then
 12 removed that action to this court in August 2013. *Sargent v. HG Staffing*, 3:13-cv-00453-LRH-
 13 WGC (“Sargent action”). In that suit, Sargent and her fellow plaintiffs alleged that Defendants’
 14 wage practices violated several provisions of the FLSA and Nevada law. *Sargent v. HG Staffing*,
 15 *LLC*, 171 F. Supp. 3d 1063, 1070 (D. Nev. 2016).

16 As in the instant action, the plaintiffs alleged that Defendants, among other purportedly
 17 improper practices, required employees to perform certain tasks before or after their shifts and
 18 thus without compensation. *Sargent*, 3:13-cv-00453-LRH-WGC at (ECF No. 47 at 5). The
 19 plaintiffs therefore brought an FLSA collective action premised in part on Defendants’ alleged
 20 failure to pay overtime wages for the time the plaintiffs spent engaging in off-the-clock work
 21 activities. *Id.* at (ECF No. 47 at 11). Cathy Benson, the lead named plaintiff in the instant action,
 22 opted into the collective action along with numerous other plaintiffs.

23 Defendants eventually moved to decertify the collective action. *Id.* at (ECF No. 162).
 24 After analyzing the relevant factors, the court found that the plaintiffs were not “similarly
 25 situated,” as required under the FLSA. *Sargent*, 171 F. Supp. 3d at 1079–85. The court therefore
 26 decertified the class on March 22, 2016, and the action is on-going.

27
 28 dismiss the FAC. ECF No. 15. The court will therefore deny the original motion to dismiss (ECF
 No. 12) as moot.

1 **B. Benson I: *Benson v. HG Staffing*, 3:16-cv-00191-RCJ-VPC**

2 Several weeks after the Sargent action’s decertification, Cathy Benson, along with six
 3 other plaintiffs that had originally opted into the Sargent action, again filed suit against HG
 4 Staffing and GSR in Nevada state court. Defendants once again removed the suit to federal court,
 5 but the case was assigned to Judge Robert C. Jones. *Benson v. HG Staffing*, 3:16-cv-00191-RCJ-
 6 VPC (“Benson I”). Unlike the prior suit, the plaintiffs only alleged state-law claims, which were
 7 premised on many of the same factual allegations as the Sargent action. *See Id.* at (ECF No. 7).

8 All seven plaintiffs eventually accepted offers of judgment from Defendants. *Id.* at (ECF
 9 Nos. 16–22). The clerk of the court consequently entered judgment in favor of each plaintiff on
 10 June 6, 2016. *Id.* at (ECF Nos. 23–29).

11 **C. Instant action (“Benson II”) and parallel actions**

12 Several weeks later, the Benson I plaintiffs filed five separate actions against both HG
 13 Staffing and GSR in this court, including the instant action. *See Benson v. HG Staffing*, 3:16-cv-
 14 00388-LRH-WGC (“Benson II” or “instant action”); *Corral v. HG Staffing*, 3:16-cv-00386-
 15 LRH-WGC; *Ramirez v. HG Staffing*, 3:16-cv-00318-LRH-WGC; *Reader v. HG Staffing*, 3:16-
 16 cv-00387-LRH-WGC; *Reader v. HG Staffing*, 3:16-cv-00392-LRH-WGC. While some of the
 17 plaintiffs from Benson I are lead named plaintiffs in their respective actions,² other individuals
 18 formerly employed by Defendants also filed suit in each action. It appears that most if not all of
 19 these plaintiffs in the instant and parallel actions were opt-in plaintiffs in the Sargent action.

20 Defendants have now moved to dismiss the instant action.³

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23 ² Two of the Benson I plaintiffs, Marlene Sanchez and Imogen Holt, are not lead named
 24 plaintiffs but joined two of the five parallel actions: *Ramirez v. HG Staffing*, 3:16-cv-00318-
 25 LRH-WGC (Marlene Sanchez) and *Reader v. HG Staffing*, 3:16-cv-00392-LRH-WGC (Imogen
 26 Holt). Holt also joined another parallel action: *Reader v. HG Staffing*, 3:16-cv-00387-LRH-
 WGC.

27 ³ Because the parallel actions are separate cases, this order only addresses the instant action,
 28 *Benson v. HG Staffing*, 3:16-cv-00388-LRH-WGC. The parallel actions are referenced only for
 context.

1 **II. Legal standard**

2 To survive a motion to dismiss for failure to state a claim, a complaint must satisfy the
 3 Federal Rule of Civil Procedure 8(a)(2) notice-pleading standard. *Mendiondo v. Centinela Hosp.*
 4 *Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir. 2008). That is, a complaint must contain “a short and
 5 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
 6 The 8(a)(2) pleading standard does not require detailed factual allegations, but a pleading that
 7 offers “‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action’”
 8 will not suffice. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
 9 550 U.S. 544, 555 (2007)).

10 To satisfy the plausibility standard, 8(a)(2) requires a complaint to “contain sufficient
 11 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.*
 12 (quoting *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the pleaded factual
 13 content allows the court to draw the reasonable inference, based on the court’s “judicial
 14 experience and common sense,” that the defendant is liable for the misconduct alleged. *See id.* at
 15 678–79. The plausibility standard “is not akin to a probability requirement, but it asks for more
 16 than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts
 17 that are merely consistent with a defendant’s liability, it stops short of the line between
 18 possibility and plausibility of entitlement to relief.” *Id.* at 678 (internal quotation marks omitted).

19 In reviewing a motion to dismiss, the court accepts the facts alleged in the complaint as
 20 true. *Id.* The “factual allegations that are taken as true must plausibly suggest an entitlement to
 21 relief, such that it is not unfair to require the opposing party to be subjected to the expense of
 22 discovery and continued litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).
 23 Moreover, “bare assertions . . . amount[ing] to nothing more than a formulaic recitation of the
 24 elements of a . . . claim . . . are not entitled to an assumption of truth.” *Moss v. U.S. Secret Serv.*,
 25 572 F.3d 962, 969 (9th Cir. 2009) (brackets in original) (internal quotation marks omitted)
 26 (citing *Iqbal*, 556 U.S. at 681). The court discounts these allegations because “they do nothing
 27 more than state a legal conclusion—even if that conclusion is cast in the form of a factual
 28 allegation.” *Id.* (citing *Iqbal*, 556 U.S. at 681). “In sum, for a complaint to survive a motion to

1 dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that content, must
 2 be plausibly suggestive of a claim entitling the plaintiff to relief.” *Id.*

3 **III. Discussion**

4 Defendants first argue that, because Plaintiff Benson accepted an offer of judgment in
 5 Benson I, claim preclusion (i.e., res judicata) bars her instant claim.⁴ Defendants do not appear to
 6 argue that claim preclusion affects the remaining plaintiffs in this action, as they were not party
 7 to the Benson I action. However, Defendants contend that all of the other plaintiffs’ claims
 8 should be dismissed because (1) Plaintiffs have failed to sufficiently state a claim for failure to
 9 pay overtime and (2) issue preclusion bars this collective action due to the court’s decertification
 10 of the Sargent action’s FLSA collective action. The court will address each issue in turn.

11 **A. Claim preclusion bars Plaintiff Benson’s claim**

12 “Res judicata, or claim preclusion, ‘bars any lawsuits on any claims that were raised or
 13 could have been raised in a prior action.’” *Fed. Trade Comm’n v. Garvey*, 383 F.3d 891, 897 (9th
 14 Cir. 2004) (quoting *Providence Health Plan v. McDowell*, 361 F.3d 1243, 1249 (9th Cir. 2004)).
 15 “Claim preclusion applies if there is (1) an identity of claims; (2) a final judgment on the merits;
 16 and (3) identity or privity between parties.” *Id.* (internal quotation marks omitted). “The central
 17 criterion in determining whether there is an identity of claims between the first and second
 18 adjudications is ‘whether the two suits arise out of the same transactional nucleus of facts.’”
Frank v. United Airlines, Inc., 216 F.3d 845, 851 (9th Cir. 2000) (quoting *Costantini v. Trans
 19 World Airlines*, 681 F.2d 1199, 1201–02 (9th Cir. 1982)). “It is immaterial whether the claims
 20 asserted subsequent to the judgment were actually pursued in the action that led to the judgment;
 21 rather, the relevant inquiry is whether they could have been brought.” *United States ex rel.
 22 Barajas v. Northrop Corp.*, 147 F.3d 905, 909 (9th Cir. 1998).

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24 ⁴ One of Defendants’ section headings asserts that claim preclusion bars “Plaintiff Shenna
 25 Corral’s” claim. ECF No. 15 at 3. This is clearly a typographical error, as Shenna Corral is not a
 26 plaintiff in this action—but is a lead named plaintiff in one of the parallel cases—and the
 27 section’s text correctly refers to Cathy Benson.

1 Here, the Benson I action (3:16-cv-00191-RCJ-VPC) and the instant action meet all three
 2 prongs and result in claim preclusion for Cathy Benson. Turning first to the last prong, there is
 3 clearly privity. Because Benson is a plaintiff in both cases and HG Staffing and GSR are the
 4 defendants, the interests are identical between the two cases. *See Va. Sur. Co. v. Northrop*
 5 *Grumman Corp.*, 144 F.3d 1243, 1247 (9th Cir. 1998) (“It is the identity of interest that controls
 6 in determining privity, not the nominal identity of the parties.” (quotation marks and citation
 7 omitted)). Moreover, it is undisputed that Benson’s acceptance of Defendants’ offer of judgment
 8 resulted in final judgment on the merits, as evidenced by the clerk of the court entering judgment
 9 in the case.

10 Finally, there is an identity of claims because Benson asserted a claim of failure to pay
 11 overtime in violation of Nevada law based in part on the same employer conduct alleged in this
 12 action. *See Benson v. HG Staffing*, 3:16-cv-00191-RCJ-VPC at (ECF No. 7 at 13–14). Claim
 13 preclusion bars a plaintiff from re-litigating the same case based solely on a different legal
 14 theory. *E.g., Clark v. Haas Grp., Inc.*, 953 F.2d 1235, 1239 (10th Cir. 1992) (finding that claim
 15 preclusion applied when a plaintiff settled an FLSA claim against her employer and then later
 16 brought a separate suit claiming violations of the Equal Pay Act and ADEA based on the same
 17 alleged conduct). This principle is especially pronounced in this case, where Benson’s legal
 18 theories are merely state and federal-law duplicates of one another.

19 Nonetheless, Plaintiffs argue that claim preclusion does not apply because the offer of
 20 judgment in Benson I resulted in judgment in favor of Benson and against Defendants. ECF No.
 21 18 at 8. Plaintiffs assert that a “judgment in favor of a plaintiff is *res judicata* on liability against
 22 Defendants” only. *Id.* However, Plaintiffs cite no authority in support of this argument, and it is
 23 without merit. Claim preclusion applies if the above-cited prongs are met, as they are in the
 24 instant case. The court therefore finds that Plaintiff Cathy Benson is barred from asserting her
 25 present FLSA claim and will be dismissed from this action. This ruling does not affect the
 26 remaining plaintiffs, as they were not party to the Benson I action.

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1 **B. Plaintiffs have sufficiently stated an FLSA overtime claim**

2 Defendants argue that Plaintiffs⁵ have failed to sufficiently state a claim for failure to pay
 3 overtime because Plaintiffs have not identified “any one week in which any one plaintiff was
 4 paid less than [the] wage required by the FLSA” ECF No. 15 at 5. Plaintiffs counter that
 5 they have alleged that they all regularly worked 40 hours each week—consisting of 5 shifts of 8
 6 hours—and that Defendants required them to participate in at least 20 minutes of uncompensated
 7 work-related activities each and every shift. ECF No. 18 at 4–5. Plaintiffs also highlight the
 8 spreadsheet that they attached to their operative complaint, which lists each plaintiff’s hourly pay
 9 rate, the amount of uncompensated overtime worked in a regular week, and the amount of
 10 overtime pay owed for a week of work.⁶ See ECF No. 14-1.

11 In *Landers v. Quality Communications*, the Ninth Circuit addressed the level of
 12 specificity required to adequately plead an FLSA overtime claim in light of the *Twombly/Iqbal*
 13 heightened pleading standard. 771 F.3d 638 (9th Cir. 2014), as amended (Jan. 26, 2015). The
 14 *Landers* court “decline[d] to make the approximation of overtime hours the *sine qua non* of
 15 plausibility for claims brought under the FLSA.” *Id.* at 641. “Recognizing that employers are in
 16 control of ‘most (if not all) of the detailed information concerning a plaintiff-employee’s
 17 compensation and schedule,’ the court held that plaintiffs in FLSA ‘cases cannot be expected to
 18 allege ‘with mathematical precision,’ the amount of overtime compensation owed by the
 19 employer.’” *Johnson v. Pink Spot Vapors, Inc.*, No. 2:14-CV-1960-JCM-GWF, 2015 WL
 20 433503, at *2 (D. Nev. Feb. 3, 2015) (quoting *Landers*, 771 F.3d at 641–46). Nonetheless, the
 21 court further held that plaintiffs “should be able to allege facts demonstrating there was at least
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 24 ⁵ The court will continue to collectively refer to the remaining plaintiffs in this case as
 25 “Plaintiffs.”

26 ⁶ Plaintiffs’ spreadsheet is not based on a specific work week. Rather, Plaintiffs have multiplied
 27 20 minutes, the amount of time they allege they worked off the clock each shift, by 5, the
 28 number of shifts they regularly worked a week, to arrive at 1.67 hours of overtime worked a
 week. Plaintiffs then multiplied this number by their individual overtime rate—i.e., 1.5 times
 their listed individual pay rate—to calculate their individual amount of overtime pay owed for a
 week. See ECF No. 14 at 5 (explaining this calculation).

1 one workweek in which they worked in excess of forty hours and were not paid overtime
 2 wages." *Landers*, 771 F.3d at 646.

3 Shortly after *Landers*, another court within this district addressed how the holding
 4 applied to a case in which the plaintiffs, rather than indicating a specific week in which they did
 5 not receive overtime pay, alleged that they were required to participate in a specific amount of
 6 unpaid off-the-clock activities each shift. *Levert v. Trump Ruffin Tower I, LLC*, No. 2:14-CV-
 7 01009-RCJ, 2015 WL 133792 (D. Nev. Jan. 9, 2015) ("Plaintiffs do not identify a specific
 8 workweek during which they worked in excess of 40 hours, but instead allege that 'each and
 9 every day' they were required to perform 115 minutes of additional work-related activities.").

10 The court held

11 that Plaintiffs' failure to allege a *specific* workweek during which they worked in
 12 excess of 40 hours is not necessarily fatal to their claim. After all, Plaintiffs allege
 13 that they worked off-the-clock each and every day. So, if Plaintiffs were to assert
 14 that they worked more than eight hours on any given day and that they were
 15 always assigned to work at least five days a week, then that might be enough for
 16 the Court to infer that in every workweek during their employment, Plaintiffs
 17 were working more than 40 hours and are entitled to the appropriate
 18 compensation. Thus, in Plaintiffs' situation, identifying individual weeks may be
 19 unnecessary to satisfy the *Iqbal/Twombly* standard since Plaintiffs would be
 20 demonstrating that the overtime violations were occurring every week during their
 21 employment and not only on specific weeks.

22 *Id.* at *5. However, the court ultimately found the complaint defective because it did not allege
 23 that all the plaintiffs "were assigned at least five shifts of eight hours each workweek . . ." *Id.* at
 24 *4. The court would have therefore needed to assume this fact in order for the plaintiffs to have
 25 adequately pled that their uncompensated activities constituted unpaid overtime. *Id.* The court
 26 therefore dismissed the complaint but granted the plaintiffs leave to amend. *Id.* at *5; *see also*
 27 *Pink Spot Vapors*, 2015 WL 433503, at *2–4 (discussing both *Landers* and *Levert* and applying
 28 the decisions to a case involving plaintiffs alleging consistent off-the-clock work).

29 This court agrees with the analysis in *Levert*. Plaintiffs bringing an FLSA overtime claim
 30 satisfy the pleading standard set forth in *Twombly*, *Iqbal*, and *Landers* when they allege that they
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1 (1) work at least 40 hours a week “on the clock” and (2) are required to perform specific tasks
 2 “off the clock” (i.e., without compensation) for a specific length of time each shift.⁷

3 The court finds that Plaintiffs in the instant action have met that burden. They allege that
 4 “Plaintiff Benson and each and every other named Plaintiff were employed by Defendants as
 5 room attendants and were scheduled for, and regularly worked, five (5) shifts per week, at least
 6 eight (8) hours per shift, and forty (40) hours per workweek” ECF No. 14 at 4. As discussed
 7 above, Plaintiffs further allege that Defendants “required them to arrive 20 minutes or more prior
 8 to their regularly scheduled start time to present themselves to their shift supervisors for
 9 room/floor assignments, a uniform inspection, and to retrieve tools necessary to complete their
 10 work tasks” *Id.* Plaintiffs have also provided Defendants an estimate of how much unpaid
 11 overtime per week each individual plaintiff is seeking based on each individual’s specific hourly
 12 rate.⁸ The court finds that these details sufficiently state an FLSA overtime claim and satisfy the
 13 purpose of FRCP 8(a), which is to “give the defendant fair notice of what the plaintiff’s claim is
 14 and the grounds upon which it rests.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

15 **C. Issue preclusion does not bar Plaintiffs’ claims**

16 Defendants argue that issue preclusion (i.e., collateral estoppel) bars Plaintiffs from
 17 bringing an FLSA collective action because the court decertified the collective action in the
 18 Sargent action. Issue preclusion bars successive litigation of an issue of law or fact even if the
 19 issue recurs in the context of a different claim. *See Taylor v. Sturgell*, 553 U.S. 880, 892 (2008).

20 ⁷ Alternatively, plaintiffs could state a plausible claim if they work less than 40 hours a week but
 21 allege that their total amount of uncompensated work per week consistently brings their total
 22 hours worked—i.e., both on and off the clock—past 40 hours a week.

23 ⁸ Defendants argue that Plaintiffs’ operative complaint only discusses Cathy Benson and
 24 “merely lumps all plaintiffs together, providing no way for Defendants to meaningfully evaluate
 25 each of the claims made by each of the eight-one (81) Plaintiffs.” ECF No. 15 at 6. While the
 26 complaint collectively discusses all of the plaintiffs, the court finds that Defendants’ conclusion
 27 is inaccurate. Although the complaint uses Plaintiff Benson as an example, it alleges that her
 28 fellow plaintiffs worked “the same or similar schedules” and were affected by the same policy
 that resulted in uncompensated overtime. ECF No. 14 at 4–5. Therefore, Plaintiffs are alleging
 that Defendants’ policies required *each* suing employee to perform 20 minutes of tasks each and
 every shift without compensation and in excess of their 40 hours of work each week. Plaintiffs
 even specify how these 20 minutes were spent before each shift. Based on these details,
 Defendants have fair notice of Plaintiffs’ claims.

1 “Where a federal court has decided the earlier case, federal law controls the [issue-preclusion]
 2 analysis.” *McQuillion v. Schwarzenegger*, 369 F.3d 1091, 1096 (9th Cir. 2004). “Three factors
 3 must be considered before applying collateral estoppel: (1) the issue at stake must be identical to
 4 the one alleged in the prior litigation; (2) the issue must have been actually litigated [by the party
 5 against whom preclusion is asserted] in the prior litigation; and (3) the determination of the issue
 6 in the prior litigation must have been a critical and necessary part of the judgment in the earlier
 7 action.” *Id.* (internal quotation marks omitted) (quoting *Trevino v. Gates*, 99 F.3d 911, 923 (9th
 8 Cir. 1996)).

9 The court finds that Defendants fail to demonstrate that even the first prong is met. In the
 10 Sargent action, this court found that the conditionally-certified class warranted decertification
 11 based on an analysis of all three relevant factors. *Sargent*, 171 F. Supp. 3d at 1079–85. For
 12 example, the court found that there were disparate factual and employment settings based in part
 13 on the fact that “Plaintiffs worked in over 50 different departments and sub-departments,
 14 including more than 70 different positions.” *Id.* at 1081. Specifically, the court held that “a
 15 blanket statement that Defendants had a policy of suffering or permitting work without
 16 compensation is not enough to demonstrate a single policy [sufficient to show that Plaintiffs
 17 were similarly situated], as Plaintiffs were employed in many different departments, under many
 18 different supervisors, and allege a variety of uncompensated activities, including picking up
 19 equipment, attending meetings, changing uniforms, and attending dance classes.” *Id.* at 1080.

20 Here, Plaintiffs have attempted to form a narrower class composed solely of room
 21 attendants who all base their overtime claims on the same alleged policy of being required to
 22 present themselves to their shift supervisors 20 minutes before their shifts began. Therefore, the
 23 court does not find that its decision to decertify the class in the Sargent action presents the same
 24 issue as the prospective certification of the instant action’s collective action. Moreover,
 25 Defendants’ argument would result in automatically barring plaintiffs who opt into a collective
 26 action that is later decertified from attempting to litigate their claims in the future as a properly-

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1 constructed collective action (i.e., one composed of similarly-situated plaintiffs). Defendants do
2 not cite to any authority that would persuade the court that such a bar should apply.⁹

3 The court therefore finds that issue preclusion does not apply. And because the court has
4 found that Plaintiffs sufficiently stated a claim for failure to pay overtime, it will deny
5 Defendants' motion to dismiss as to the remaining plaintiffs.

6 **IV. Conclusion**

7 IT IS THEREFORE ORDERED that Defendants' motion to dismiss Plaintiffs' First
8 Amended Complaint (ECF No. 15) is **GRANTED in part** as to Plaintiff Cathy Benson. Plaintiff
9 Benson is dismissed from this action.

10 IT IS FURTHER ORDERED that Defendants' motion to dismiss Plaintiffs' First
11 Amended Complaint (ECF No. 15) is **DENIED in part** as to the remaining named plaintiffs.

12 IT IS FURTHER ORDERED that Defendants' motion to dismiss Plaintiffs' original
13 complaint (ECF No. 12) is **DENIED as moot**.

14 IT IS SO ORDERED.

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16 DATED this 1st day of March, 2017.



17
18 LARRY R. HICKS
19 UNITED STATES DISTRICT JUDGE
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23 ⁹ In support of their argument, Defendants cite a case in which the district court dismissed a
24 second FLSA action based on issue preclusion after the first action was decertified. See *Belle v.*
Univ. of Pittsburgh Med. Ctr., No. CIV.A. 13-1448, 2014 WL 4828899, at *1 (W.D. Pa. Sept.
25 29, 2014). However, the court finds *Belle* factually distinct from the instant case. There, 95.32%
26 of the opt-in plaintiffs in the first action were plaintiffs in the second action, leading the court to
conclude that the second case was a "redux" of the first. *Id.* The court also noted that the second
27 action was premised on the same legal theories stemming from the same employer policies as the
first action. *Id.* at *2. The court thus held that there was "no doubt that identical factual and legal
28 issues would incur." *Id.* As discussed above, this instant action is based on a narrower proposed
class than the Sargent action and Plaintiffs highlight an employer policy specific to that class.